



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
\*\*\*

SEVENTH DIVISION

*MINUTES of the proceedings held on July 5, 2017.*

*Present:*

ALEXANDER G. GESMUNDO ----- Chairperson  
MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Associate Justice  
ZALDY V. TRESPESSES ----- Associate Justice

The following resolution was adopted:

**Criminal Case No. SB-17-CRM-0160 – People v. EDNA B. BANDA and GEMMA B. BANZUELA.**

This resolves the following:

1. The Prosecution's "MOTION FOR RECONSIDERATION (OF THE COURT'S RESOLUTION DATED MAY 31, 2017)" dated June 19, 2017; and
2. Accused Edna B. Banda and Gemma B. Banzuela's "COMMENT/OPPOSITION (RE: MOTION FOR RECONSIDERATION DATED 19 JUNE 2017)" dated June 23, 2017.

---

Following the quashal of the Information in the Court's *Resolution* dated May 31, 2017, the Prosecution seeks to challenge the same in the present *Motion for Reconsideration*.<sup>1</sup> In its Motion, the Prosecution argues that the Court committed grave error in finding that the acts for which the accused were charged are not expressly punishable under Section 128, being the penal provision of *Presidential Decree No. 1445 (P.D. 1445)*, otherwise known as the *Government Auditing Code of the Philippines*.<sup>2</sup> The Prosecution calls particular attention to the express inclusion of Section 106 thereto, arguing that the said provision should be treated as a prohibitory provision which enforces all other mandatory provisions in the same law relating to the disbursements of funds which are not specifically penalized on their own (such as Sections 4[3] and 84[2]). It maintained that this interpretation is consistent with the declared policy of the State to safeguard all resources of the government from loss and illegal or improper disposition. Hence, the

<sup>1</sup> Records, Vol. 1, pp. 185-190

<sup>2</sup> Ordaining and Instituting a Government Auditing Code of the Philippines [GOVERNMENT AUDITING CODE OF THE PHILIPPINES], Presidential Decree No. 1445 (1978)

Prosecution thrusts that officials may be held liable under Section 106 of *P.D. 1445*, and prays that the Court's *Resolution* dated May 31, 2017 be set aside.

In their *Comment/Opposition*,<sup>3</sup> Accused Edna B. Banda and Gemma B. Banzuela [**“the accused”**] counter that criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, application, or by any equitable considerations.<sup>4</sup> Section 106 of *P.D. 1445* is not a prohibitory provision. It merely contains a declaration of a rule regarding the imposition of an unspecified liability which may either be civil, criminal, or administrative. Liability stated elsewhere in the law should first attach before Section 106 can determine the liability of the perpetrators of the act.

The Prosecution's arguments fail to persuade.

Pertinently, Sections 128 and 106 of *P.D. 1445* provide:

SECTION 128. Penal Provision. — Any violation of the provisions of Sections 67, 68, 89, 106, and 108 of this Code or any regulation issued by the Commission implementing these sections, shall be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

SECTION 106. Liability for Acts Done by Direction of Superior Officer. — No accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

While Section 106 is expressly mentioned in the penal clause of *P.D. 1445*, to conclude that it, by itself, contains a prohibitory provision would be to stretch the very language it is couched in. To recapitulate, the Court had already found that the plain import of Section 106 is that it merely sets forth the order of liability, or exemption therefrom, of a superior officer and a subordinate officer who had acted under the direction of such superior officer, or who between them should be held primarily or secondarily liable. Read alone, it penalizes no criminal act which should make one accountable under *P.D. 1445*. It cannot, therefore, stand by itself such that “a violation of Section 106,” as the Prosecution insinuates, remains vague for it pinpoints to no specific criminal act that stands to violate the General and Penal Provisions of *P.D. 1445*. A conjunctive provision either specifically falling under Sections 67, 68, 89 or 108, is what constitutes the criminal act. In the same way, “violation of Sections 4(3) and 84(2),” conjoined with Section 106, may result in incurring liability, but the same would *not* be penalized as criminal in

<sup>3</sup> Records, Vol. 1, pp. 194-198

<sup>4</sup> Citing *People v. Garcia*, G.R. No. L-2873, February 28, 1950

nature. Worth reiterating is the maxim that no act constitutes a crime unless it is made so by law - *nullum crimen, nulla poena sine lege*.<sup>5</sup>

Moreover, the Court cannot accept the Prosecution's generous interpretation of Section 106 as it is inconsistent with the doctrine that penal laws are strictly construed against the State and liberally construed against the accused. In *Laurel v. Abrogar*,<sup>6</sup> the Supreme Court significantly teaches:

The rule is that, penal laws are to be construed strictly. Such rule is founded on the tenderness of the law for the rights of individuals and on the plain principle that the power of punishment is vested in Congress, not in the judicial department. It is Congress, not the Court, which is to define a crime, and ordain its punishment. Due respect for the prerogative of Congress in defining crimes/felonies constrains the Court to refrain from a broad interpretation of penal laws where a "narrow interpretation" is appropriate. The Court must take heed to language, legislative history and purpose, in order to strictly determine the wrath and breath of the conduct the law forbids. However, when the congressional purpose is unclear, the court must apply the rule of lenity, that is, ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.

Penal statutes may not be enlarged by implication or intent beyond the fair meaning of the language used; and may not be held to include offenses other than those which are clearly described, notwithstanding that the Court may think that Congress should have made them more comprehensive. Words and phrases in a statute are to be construed according to their common meaning and accepted usage.

As Chief Justice John Marshall declared, "it would be dangerous, indeed, to carry the principle that a case which is within reason or mischief of a statute is within its provision, so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of kindred character with those which are enumerated. When interpreting a criminal statute that does not explicitly reach the conduct in question, the Court should not base an expansive reading on inferences from subjective and variable understanding.

Based on the foregoing, a mere violation of Section 106 will not warrant the imposition of criminal liability as per the penal clause of *P.D. 1445* for there is no penal provision to punish the act.

Consequently, there being no cogent reason proffered by the Prosecution which would justify a deviation from the *Resolution* sought to be reconsidered, the same stands.

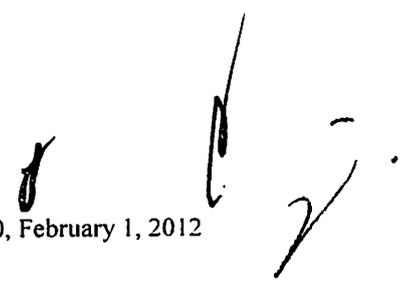
**WHEREFORE**, the *Motion for Reconsideration (Of The Court's Resolution dated May 31, 2017)* filed by the Prosecution is **DENIED**.

**SO ORDERED.**

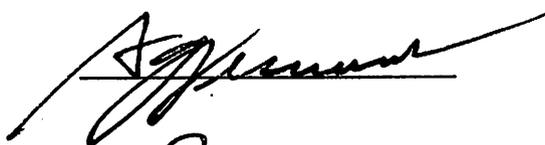
---

<sup>5</sup> *Villareal v. People*, G.R. Nos. 151258, 154954, 155101, 178057 & 178080, February 1, 2012

<sup>6</sup> G.R. No. 155076, February 27, 2006



**GESMUNDO, J., Chairperson**



---

**GOMEZ-ESTOESTA, J.**



---

**TRESPESES, J.**



---